

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRACE MILES,

No. C-08-4091 MMC

Appellant,

ORDER RE: NOTICE OF APPEAL

v.

ROYCE MAKISHIMA, et al.,

Appellees.

On November 21, 2008 appellant Grace Miles ("Miles") filed a notice of appeal, in which she purports to appeal two orders entered by the Court in the instant action on October 22, 2008. One such order denied Miles's "Corrected Request for Direct Appeal Certification," and the other denied Miles's request for a stay. As set forth in the latter, Miles is scheduled to file her opening brief in the instant action on December 5, 2008.¹

"Where the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or references to a non-appealable order, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it


¹Miles cross-filed her notice of appeal in both the instant action and a related action, No. C-08-4375 MMC. On October 22, 2008, the Court entered two orders in the instant action, as described above. On the same date, the Court also entered an order denying Miles's "Corrected Request for Direct Appeal Certification" in the related case. By separate order filed concurrently herewith, the Court has addressed the notice of appeal as it applies to that action.

1 has not been deprived of jurisdiction.” Ruby v. Sec’y of the U.S. Navy, 365 F.2d 385, 389
2 (9th Cir. 1966). Here, Miles purports to appeal from two orders that clearly are non-
3 appealable. See Evans v. Woodford, No. 07-16195, 2007 WL 2709981, at *1 (9th Cir.
4 Sept. 13, 2007) (holding order denying motion to certify prior order for interlocutory appeal
5 and denying motion to stay proceedings non-appealable); see also Oppenheimer v. L.A.
6 County Flood Control Dist., 453 F.2d 895, 895 (9th Cir. 1972) (holding interlocutory orders
7 not appealable unless certified for appeal by district judge).

8 Accordingly, the deadline for Miles to file her opening brief remains December 5,
9 2008.

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11 **IT IS SO ORDERED.**

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13 Dated: December 2, 2008

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15 MAXINE M. CHESNEY
16 United States District Judge
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